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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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EXAMINER	
SHEDIN, M	
ART UNIT	PAPER NUMBER
335	7
DATE MAILED:	10/23/84

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

~~This~~ application has been examined ~~Responsive to communication filed on 8/23/84~~ ~~This~~ action is made final.

A shortened statutory period for response to this action is set to expire ~~3~~ month(s), ~~15~~ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449
4. Notice of informal Patent Application, Form PTO-152
5. Information on How to Effect Drawing Changes, PTO-1474
6.

Part II SUMMARY OF ACTION

1. Claims 10-18 are pending in the application.

Of the above, claims _____ are withdrawn from consideration.

2. Claims _____ have been cancelled.

3. Claims _____ are allowed.

4. Claims 10-18 are rejected.

5. Claims _____ are objected to.

6. Claims _____ are subject to restriction or election requirement.

7. This application has been filed with informal drawings which are acceptable for examination purposes until such time as allowable subject matter is indicated.

8. Allowable subject matter having been indicated, formal drawings are required in response to this Office action.

9. The corrected or substitute drawings have been received on _____. These drawings are acceptable;
 not acceptable (see explanation).

10. The proposed drawing correction and/or the proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner. disapproved by the examiner (see explanation).

11. The proposed drawing correction, filed _____, has been approved. disapproved (see explanation). However, the Patent and Trademark Office no longer makes drawing changes. It is now applicant's responsibility to ensure that the drawings are corrected. Corrections MUST be effected in accordance with the instructions set forth on the attached letter "INFORMATION ON HOW TO EFFECT DRAWING CHANGES", PTO-1474.

12. Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has been received not been received
 been filed in parent application, serial no. _____; filed on _____.

13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.

14. Other

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1. Claims 15 and 16 are rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 1 of applicant's US Patent No. 4,436,092. This is a double patenting rejection.

Claims 17 and 18 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of applicant's US Patent No. 4,436,092. Although the claims are not identical, they are not patentably distinct from each other because the establishment of values of dynamically changing variables for use in an algorithm requires the continual sampling of that variable, the selection of a suitable sampling rate is considered to be a design choice well within the scope of knowledge of one of ordinary skill in the art.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of monopoly by prohibiting claims in a second patent not patentably distinct from claims in a first patent. *In re Vogel*, 164 USPQ 619. A timely filed terminal disclaimer in compliance with 37 CFR 1.321(b) would overcome a rejection on this ground. See MPEP 804.02 and 1490.

2. The following is a quotation of 35 U.S.C. 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 10-14 are rejected under 35 U.S.C. 103 as being unpatentable over Csapo.

Csapo clearly teaches a physiologically controlled rate adaptive pacemaker, wherein blood temperature controls the pacing rate. Said pacemaker comprising means for generating electrical stimulating pulses means for sensing blood temperature, electrode means for applying said pulses to the heart, catheter means associated with said electrode and sensing means for protectively encasing said means from said pacemaker to said heart, and electrical conductor means running through said catheter lumen for operatively connecting said electrode and sensing means to said pulse generating means, wherein said sensing means is encased in said lumen (Figure 3) and said electrode means are mounted on said catheter at the distal end of said catheter. It would be considered obvious to one of ordinary skill in the art to utilize any suitable conductive wire well known in the art for connecting said pulse generating

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means to said sensor and/or electrode means, such as a bifilar coil wire. Further, the spatial relationship between the temperature sensor and the stimulation means or the use of multi-lumen catheters to implement said electrode or sensing means would also be considered obvious to one of ordinary skill in the art. Finally, as stated by applicant Csapo identifies the need for flexibility in the lead which would be inherent in the material of which it is made, thus applicant's assertion that their lead is more flexible is only a matter of degree, and furthermore it would be considered obvious to one of ordinary skill in the art to select materials suitable to enhance the flexibility of such a lead.

3. Applicant's arguments filed August 23, 1984 have been fully considered but they are not deemed to be persuasive.

Applicant's amendment necessitated the new grounds of rejection Accordingly, THIS ACTION IS MADE FINAL. See MPEP 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The practice of automatically extending the shortened statutory period an additional month upon the filing of a timely response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL

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AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 CFR 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Mitchell J. Shein at telephone number 703-557-3125.


M. Shein:dg

10-10-84


WILLIAM E. KAMM
PRIMARY EXAMINER
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17 Oct 84